

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ROBERT W. SULLIVAN,)
d.b.a. Crown Cedar Products,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 78-63

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of Section 9.03 of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, at a formal hearing in Seattle on June 5, 1978. David Akana presided.

Appellant was represented by his attorney, Craig V. Wentz; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Pollution Control

1 | hearings Board makes these

2 | FINDINGS OF FACT

3 | I

4 | Respondent, pursuant to RCW 43.21B.260, has filed with this Board
5 | a certified copy of its Regulation I, and amendments thereto, which are
6 | noticed.

7 | II

8 | Appellant owns and operates a wood waste burner on its property at
9 | 428th Avenue S.E. and S.E. Reinig Road in North Bend from which certain
10 | emissions were observed.

11 | III

12 | On February 28, 1978 at about 2:00 p.m., respondent's inspector
13 | saw gray colored smoke coming from appellant's property. After
14 | positioning himself he took two photographs, made an observation of
15 | the plume, and recorded a density between Ringelmann 3-1/2 to 5 for
16 | eight consecutive minutes. Respondent issued a Notice of Violation
17 | by certified mail sent on March 2, 1978. Appellant received the notice
18 | on March 3, 1978. From this notice followed a \$250 civil penalty
19 | (No. 3725) and the instant appeal.

20 | IV

21 | Respondent's Regulation I, Section 9.03(b) makes unlawful the
22 | emission of an air contaminant described in Finding of Fact III above.
23 | Section 3.29 provides for a civil penalty of up to \$250 per day for
24 | each violation of Regulation I.

25 | V

26 | Any Conclusion of Law which should be deemed a Finding of Fact

27 | FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 is hereby adopted as such.

2 From these Findings, the Board comes to these

3 CONCLUSIONS OF LAW

4 I

5 Respondent promptly mailed appellant a notice of each observed
6 violation by certified mail. Such notice was reasonable, timely and
7 adequate.

8 II

9 Appellant did not show that the substance of the Regulation or
10 the procedures taken were unlawful or erroneous.

11 III

12 Respondent's regulations have not been shown to apply unequally to
13 appellant and other businesses, some of which are far larger than
14 appellant.

15 IV

16 Appellant violated respondent's Regulation I, Section 9.03(b)
17 on February 28, 1978. The \$250 civil penalty assessed therefor is
18 reasonable in amount and in light of the purposes of the Washington
19 Clean Air Act and, under the circumstances of this case, should be
20 affirmed.

21 V

22 Any Finding of Fact which should be deemed a Conclusion of Law
23 is hereby adopted as such.

24 From these Conclusions the Board enters this

25 ORDER

26 The \$250 civil penalty (No. 3725) is affirmed.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington this 8th day of June, 1978.

2 POLLUTION CONTROL HEARINGS BOARD

3 
4 DAVE J. MOONEY, Chairman

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6 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER